

Corporate Response Form 'Third Package' Consultation
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Consultation Questions

Chapter 1 – Consumer Protection

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| 1 | Consultees are invited to comments on Government proposals to implement the consumer protection measures of the Third Package. |
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General

Before addressing any specific questions below, NEA would wish to comment on a number of issues relating to UK compliance or non-compliance with the provisions of the EU Third Internal Energy Market Package. In general, comments refer to elements that do not invite response because the Government appears to assume, wrongly in NEA's view, that existing procedures and programmes meet the requirements of the Package.

National Energy Action Plans

NEA notes the Government's view that compliance with Article 3(8) of the Electricity Directive and Article 3(4) of the Gas Directive is assured through:

- Formulating national energy plans
- Providing appropriate social security benefits
- Providing support for domestic energy efficiency improvements

Formulating national energy action plans

NEA is not persuaded that the recitation of a list comprising programmes such as the Decent Homes Standard, Warm Front, the Carbon Emissions Reduction Target and the Community Energy Saving Programme constitutes a national energy action plan.

Commendable though these programmes are, they are not national and nor are they a plan; rather they are an ad hoc and fragmented collection of

initiatives with different funding sources, different beneficiaries and eligibility criteria and different objectives.

NEA takes the view that a national energy action plan must be both comprehensive and structured and have a predetermined objective. This would require development (and oversight) of a framework to improve the national housing stock in terms of energy efficiency; setting of specific goals; and action to ensure that these goals are met.

In practical terms, NEA believes that only a structured programme designed to remedy the inadequate heating and insulation standards of the UK housing stock to a given standard and within a given timescale merits the description of a national energy action plan.

In addition, NEA is not convinced that the existing programmes as listed above constitute compliance. Clearly they are subject to budgetary decisions that may cause the UK to shift from compliance to non-compliance year-on-year. This does not appear to us to be a rational and committed approach to the Directive.

Given the devolved nature of responsibility for fuel poverty and energy efficiency, and uncertain and inconsistent funding arrangements, it is possible to envisage a situation where one part of the UK may be compliant whilst others are not; or at least where some parts are more compliant than others – an absurd anomaly and one to be avoided.

Social Security

NEA notes that the Winter Fuel Payment and Cold Weather Payment are cited in illustration of the requirement to 'ensure the necessary electricity and gas supply to vulnerable households'. Leaving aside any argument over the extent to which these payments achieve that objective, NEA would again question these mechanisms as indicative of compliance. Is it being suggested that any payment of any amount to any category of household through the social security system achieves compliance?

NEA does acknowledge the substantial expenditure on Winter Fuel Payments since 1997 but wonders at what point compliance would be undermined by, for instance, reductions in the amount of the payment(s) or changes to the eligibility criteria. In reducing fuel poverty-related benefits, leading in turn to an increase in fuel poverty, can it be asserted that the Government is taking action to address fuel poverty?

Single point of contact for consumers

Articles 3(12) and 3(9) respectively of the Electricity and Gas Directives require member States to ensure provision of a single point of contact for consumers with access to all necessary information concerning their rights,

current legislation and the means of dispute resolution.

We note the Government's belief that, since the single point of contact can be provided as part of a general consumer information point, UK compliance is assured through the services and remit of Consumer Direct. NEA would question whether a generalist service is appropriate in the case of protection of energy consumers for the reasons cited below:

Consumer protection in the context of fuel poverty can be extremely complex and requires considerable expertise across a number of policy areas including:

- supplier adherence to Codes of Practice covering vulnerable and disadvantaged energy consumers and other social obligations**
- provision of expert and impartial advice on energy tariffs including discounts and rebates for vulnerable households**
- intervention on behalf of consumers in what can be complex negotiations with energy companies**
- informed comment on the implications of initiatives such as the national roll-out of smart meters**
- advocacy to promote wider solutions to fuel poverty including the need for increased resources dedicated to domestic heating and insulation programmes**

NEA does acknowledge that the existing framework to protect the interests of domestic energy consumers can be construed as compliant; however, given our understanding of Government plans to make CABx part of the frontline advice service for energy consumers, we have reservations about a number of issues. Will CABx assume the general role currently undertaken by Consumer Direct? Will CABx assume the role of the Extra Help Unit of Consumer Focus in delivering expert and in-depth advice to energy consumers in particularly complex cases. And, finally, we note that the role of Consumer Focus is described as that of an 'advocacy body providing assistance to vulnerable consumers in the energy market [and with]...specific statutory responsibilities and powers relating to consumers' but NEA understands that the existence of Consumer Focus is threatened by

proposals for the reform of public bodies. It is also worth noting that Consumer Focus is identified as the only option in compiling and maintaining the Energy Consumer Checklist; NEA would welcome clarification as to which alternative agency might take on these responsibilities.

Given this degree of uncertainty, and the fact that the consultation describes a support framework for consumers that will cease to exist or be significantly revised, NEA does not believe that the UK will be able to demonstrate full compliance.

Energy Poverty

NEA has always recognised, and commended, the fact that the UK has a uniquely comprehensive infrastructure in place to address the three key elements of fuel poverty:

- low household income (e.g. Winter Fuel Payments and Cold Weather Payments)
- high energy prices (e.g. Government support for discounts for vulnerable households)
- poor heating and insulation standards (e.g. Warm Front)

We note that the preamble to the Directives indicates that: 'Energy poverty is a growing problem in the Community. Member States which are affected and which have not yet done so should, therefore, develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of households facing such situation.' Despite the fuel poverty frameworks devised by successive Governments to comply with UK Fuel Poverty Strategy objectives to eradicate fuel poverty in England by 2016, NEA notes that the most recent data (Annual Report on Fuel Poverty Statistics 2010, DECC and ONS, October 2010) indicate that fuel poverty in England increased from 2.7 million households in 2007 to 3.3 million households in 2008). NEA would interpret compliance with the Directives as requiring a level of intervention that progressively, year-on-year, reduces the incidence of fuel poverty. We do not believe that action to mitigate the impact of fuel poverty or to manage the rate of increase in fuel poverty complies with either the spirit or the letter of the Directives.

In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition

	<p>will require the new supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?</p>
	<p>Agree.</p>
<p>3</p>	<p>Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.</p>
	<p>No comment</p>

Chapter 2 – Transmission and Distribution Networks

4 Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?

No comment

5 Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?

No comment

Chapter 3 – Gas Infrastructure

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| 6 | Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible. |
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No comment

Chapter 4 – Role of the National Regulatory Authority

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| 7 | Implementing binding decisions |
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For the reasons we have set out in the consultation document, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem's power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem's decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.

NEA notes and welcomes the Government assertion that, whilst regulatory independence is important in performance of regulatory tasks, the Government retains powers to set the national policy framework. Ofgem is not positioned to advance a policy agenda in pursuit of social welfare and environmental objectives and policy objectives can only be prescribed by elected politicians. However, NEA would support a regulatory role that enables Ofgem to make constructive comment in relation to measures required to benefit disadvantaged energy consumers.

NEA supports the proposed revisions to implementation and appeals processes. However, with reference to the consultation process, NEA would wish to see the regulator give higher priority to social welfare considerations in considering responses and potential outcomes. NEA believes that consumer protection within retail markets should take greater precedence over the interests of energy suppliers and the 'efficient' operation of the competitive market.

Chapter 5 - Cross border co-operation

8	Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?
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Impact Assessment Questions

These are partial Impact Assessments containing our initial qualitative assessment of the costs and benefits. We therefore would welcome any quantitative evidence to support the further development of these impact assessments. Any information provided will be treated with sensitivity and anonymity.

Consumer Switching

9	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure?
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10	The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: supplier systems changes, monitoring costs, administrative burdens, the number of extra erroneous switches which may occur as a result of our proposals, the cost of manually stopping the switch and any information regarding the number of customers that currently fall outside the 3 week switching period defined (excluding the cooling-off period).
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Consumer Information	
11	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?

12	<p>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.</p>
13	<p>What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?</p>

National Regulatory Authority

14 Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?

15 We would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding; the monitoring, enforcement and administrative costs involved and any evidence regarding the indirect costs on industry of these measures.

Transmission and Distribution

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| 16 | Are the Impact Assessment assumptions on the costs to TSOs of complying with the new TSO certification process realistic (both for those seeking derogations and those not doing so)? |
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| 17 | The Impact Assessment assumes that ensuring the independence of the compliance officer for DSOs requires little additional action on the part of the affected DSOs. Your views including evidence of costs would be appreciated. |
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Gas and LNG Operators

18	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
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19	What specific changes to current practice will be required to comply with articles 15 (unbundling) and 16 (confidentiality) of the Directive? What are the likely costs of making these changes?
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20	<p>Articles 15, 17 and 19 of the Gas Regulation specify that certain operational information must be made publicly available by 'technically and economically necessary' LNG and storage sites. What are the likely costs involved in making this information publicly available?</p>
21	<p>Article 22 of the Regulation outlines the requirement for contracts and procedures to be harmonised at 'technically and economically necessary' LNG and storage sites. What changes to current practices will, in your view, be required to achieve this and what are the likely costs of making these changes?</p>

22	<p>We would welcome evidence on the costs and benefits of introducing a licensing regime for LNG and storage as opposed to introducing the measures through changes to legislation.</p>